REMARKS

This paper is responsive to an Office Action mailed November 24, 2008. Prior to this response, claims 1-4, 7-8, 11-15, 18-19, 22-25, 28, 31-35, 38, and 41-44 were pending. Claims 1-4, 7-8, 11-15, 18-19, 22-25, 28, 31-35, 38, and 41-44 remain pending.

In Section 4 of the Office Action claims 1, 3-4, 7-8, 11-12, 14-15, 18-19, 22, 24-25, 28, 31-32, 34-35, 38, and 40-44 have been rejected under 35 U.S.C 102(e) as anticipated by Ueda et al. ("Ueda"; US 2004/0190459). The Office Action states that Ueda discloses all the limitations of claims 1, 12, 22, and 32 in paragraphs [0009-0010, 0074-0075, and 0122-0123].

The Office Action states that Ueda discloses the limitation of an index field in an RTP packet header, citing paragraphs [0009-0010], [0074-0075], and Fig. 25. In the ***Response to Arguments Section***, the Office Action states that Ueda discloses the limitation of using the index to point to a PCR MPEG2TS randomly positioned in the RTP packet payload, citing 504, Fig. 25, [0095]. The Office Action states that the storage area is maintained by using indexes (Fig. 4, [0095], and [0099]. This rejection is traversed as follows.

Paragraphs [0009-0010] in Ueda disclose a conventional process where MPEP2 TS packets are carried in an RTP packet. The process generates a timestamp from the PCR field, which is included in the RTP header. With respect to independent claims 1 and 12, Ueda's paragraphs do not disclose an index carried in an RTP packet header, an

index that points to a PCR MPEG2TS randomly positioned in the RTP packet payload, or the linking of a timestamp with the PCR MPEG2TS as a result of the index pointing. With respect to independent claims 22 and 32, Ueda's paragraphs do not disclose a timestamp packet index carried in an RTP packet header, a timestamp packet index that points to a PCR MPEG2TS randomly positioned in the RTP packet payload, or the linking of a timestamp with the PCR MPEG2TS as a result of the timestamp packet index pointing. With respect to independent claims 41 and 43, Ueda's paragraphs do not disclose accessing a local timestamp carried in the RTP packet payload that is linked to the PCR MPEG2TS to eliminate transmission delay jitter.

Ueda's paragraphs [0074 and 0075] disclose a transmission process that generates an RTP packet by adding an RTP header to a TS (Fig. 1). The RTP header includes an RTP timestamp and RTP sequence number. A reception process depacketizes the payload from the RTP packet. A timer 130 is used to measure the arrival times and arrival time jitter is computed. These paragraphs do not disclose an (timestamp packet) index carried in an RTP packet header, an (timestamp packet) index that points to a PCR MPEG2TS randomly positioned in the RTP packet payload, or the linking of a timestamp with the PCR MPEG2TS as a result of the (timestamp packet) index pointing. Neither do these paragraphs disclose accessing a local timestamp carried in the RTP packet payload that is linked to the PCR MPEG2TS to eliminate transmission delay jitter.

Paragraph [0099] discloses a management means that stores a payload in a buffer, and records the start address, data length, and RTP header. An index maintains a correspondence between the stored

information and an RTP sequence number. The sequence numbers permit the stored packets to be arranged in the correct order, in the event they are received at incorrect times due to the effect of the network. Paragraphs [0095] and [0099] do not disclose an (timestamp packet) index carried in an RTP packet header, an (timestamp packet) index that points to a PCR MPEG2TS randomly positioned in the RTP packet payload, or the linking of a timestamp with the PCR MPEG2TS as a result of the (timestamp packet) index pointing. Neither do these paragraphs disclose accessing a local timestamp carried in the RTP packet payload that is linked to the PCR MPEG2TS to eliminate transmission delay jitter.

Paragraph [0095] describes a storage area for storing information concerning RTP packets, which is managed by an index. The information stored includes headers, start addresses, and data lengths. The Applicant notes that Ueda does not disclose a PCR MPEG2TS stored in the storage area. The ***Advisory Action*** (mailed September 3, 2008) states that Ueda discloses accessing an index field in the header, and using the index field to point to a PCR MPEG2TS randomly positioned in the RTP packet payload, citing paragraph [0095]] and Fig. 25 - 504. Paragraph 0095 states:

> [0095] The queue 122 has a plurality of storage areas each used for storing information on an RTP packet. The storage areas are managed by using indexes. The information on an RTP packet includes the header of the RTP packet, the start address of the payload included in the RTP packet and the data length of the RTP packet. As described above, the payload is stored in the reception buffer 121.

The above-cited paragraph does *not* state that there is an (timestamp packet) index field stored in an RTP header, as cited in the claimed invention. The above-cited paragraph does *not* state that the disclosed index is carried as a (timestamp packet) index in an RTP packet header, as cited in the claimed invention. Alternately stated, the management of a storage area by an index does not mean that the index is carried in a packet header. And even if Ueda's index was carried in a header, there is no language or drawings in the Ueda reference stating that Ueda's index points to a PCR MPEG2TS, or that the index points to a randomly positioned PCR MPEG2TS.

Fig. 25 is a diagram showing the configuration of RTP process unit 500 employed in a conventional communications apparatus [0008]. Reference designator 504 is described as PCR registers. Packet synthesis unit 506 generates RTP a timestamp from the value of the PCR filed stored in the PCR register 504 [0010]. These paragraphs do not disclose an (timestamp packet) index carried in an RTP packet header, an (timestamp packet) index that points to a PCR MPEG2TS randomly positioned in the RTP packet payload, or the linking of a timestamp with the PCR MPEG2TS as a result of the (timestamp packet) index pointing. Paragraphs [0008-0010] state:

> [0008] Next, the RTP process unit 500 is explained in detail. FIG. 25 is a diagram showing the configuration of the RTP process unit 500 employed in the conventional communication apparatus.
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> [0009] In this case, in accordance with the RFC 2250, an RTP packet having an MPEG-2 transport stream (referred to hereafter simply as an MPEG2-TS) as a payload is required to include an RTP timestamp field in the RTP header as a field having a value synchronized to the data stored in a PCR

(Program Clock Reference) field of a TS packet, which is enclosed in the RTP packet as a portion of the RTP payload.

[0010] In the RTP process unit 500, when a TS packet generated by an MPEG-2 encoder 311 is supplied to an encoder interface (I/F) 312, the TS packet is passed on to a TS header checker 502, which checks the header of the TS packet to detect a PCR field. The TS header checker 502 stores the detected PCR field in PCR registers 504 and temporarily stores the TS packet in a TS buffer 505. A packet transmission control unit 503 manages information such as the number of input TS packets. As conditions for a packet transmission are all satisfied, the packet transmission control unit 503 issues a request for a transmission of an RTP packet to a packet synthesis unit 506. At this request, the packet synthesis unit 506 generates a timestamp from the value of the PCR field stored in the PCR registers 504. The packet synthesis unit 506 also generates the RTP packet including an RTP payload and an RTP header. The RTP payload includes the TS packets stored in the TS buffer 505 and the RTP header includes the generated timestamp in the RTP timestamp field of the RTP header.

The Applicant's claims are narrowly tailored to recite that the PCR MPEG2TS can be randomly positioned in an RTP packet, if a (timestamp packet) index is embedded in the packet header. The (timestamp packet) index is used to find the position of the PCR MPEG2TS. The Applicant respectfully requests that the specific language being relied upon by the Examiner be cited. The Applicant has analyzed the cited sections in detail, above, and conclusively shown that the cited sections do not disclose the claimed limitations. Ueda's Fig. 25 ([0008-0010]) and [0095] cannot be used to support the assertions made by the Examiner. Without support for the Examiner's assertions, a *prima facie* case has not been made in support of the rejection.

Thus, none of the above-cited sections from Ueda describe a process that accesses an index field in a RTP packet header, or that uses the index to locate a PCR MPEG2TS randomly positioned in the RTP payload (claims 1 and 22). Neither does Ueda describe a process that encapsulates an index field to a RTP packet header for use in locating a PCR MPEG2TS that is randomly positioned in the RTP payload (claims 12 and 32). None of the above-cited paragraphs disclose a local timestamp carried in the RTP packet payload that is linked to the PCR MPEG2TS for eliminating transmission delay jitter (claims 41 and 43).

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Ueda does disclose every limitation of claims 1, 12, 22, 32, 41, and 43. Since Ueda does not disclose every limitation of the claimed invention, he cannot anticipate. Claims 3-4, 7-8, and 11, dependent from claim 1, claims 14-15 and 18-19, dependent from claim 12, claims 24-25, 28, and 31, dependent from claim 22, claims 34-35 and 38, dependent from claim 32, claim 42, dependent from claim 41, and claim 44, dependent from claim 43, enjoy the same distinctions from the cited prior art.

In Section 25 of the Office Action, claims 2, 13, 23, and 33 have been rejected under 35 U.S.C. 103(a) with respect to Ueda in view of Ando et al. ("Ando"; US 7,274,863). The Office Action acknowledges that Ueda fails to disclose a timestamp resolution of 500 ns, but that Ando discloses this feature, and that it would have been obvious to modify Ueda

to include the teachings of Ando to synchronize the timestamp with the value stored in the TS packet. This rejection is traversed as follows.

The Ando reference is cited to introduce, as Background Art, the fact that the MPEG2 protocols specify a PCR arrival time of ± 500 ns. The Applicant can only find the term "synchronously" used twice in the Ando reference, again in the Background Art Section, in the explanation of conventional art time delay (col. 2, ln. 17-26). Note: Ando does not describe a means of improving synchronization or improving jitter better than the 500 ns standard.

An invention is unpatentable if the differences between it and the prior art would have been obvious at the time of the invention. As stated in MPEP § 2143, the *KSR International Co. v Teleflex Inc.* decision (82 USPQ2d 1385, 1395-1397, 2007) suggests 7 exemplary rationales to support a conclusion of obviousness, which include:

A) Combining prior art elements according to known methods to yield predictable results;

B) Simple substitution of one known element for another to obtain predictable results;

C) Use of known technique to improve similar devices (methods, or products) in the same way;

D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

E) "Obvious to try" – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

G) Some teaching, suggestion, or motivation in prior art would have lead one of ordinary skill to modify the prior art reference or the combine prior art references teachings to arrive at the claimed invention.

The Office Action states that modifications to Ueda would have been obvious to one of ordinary skill in the art in light of Ando. This rejection appears to be most closely grounded in the G) rationale - Some teaching, suggestion, or motivation in prior art would have lead one of ordinary skill to modify the prior art reference or the combine prior art references teachings to arrive at the claimed invention.

With respect to this rationale, MPEP 2143 (G) states that the rejection must articulate the following criteria to resolve the *Graham* factual analysis:

(1) a finding that there was some teaching, suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings;

(2) a finding that there was a reasonable expectation of success; and

(3) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

With respect to the first *Graham* factual analysis criteria, the obviousness rejection is based upon the assumption that that Ueda discloses all the limitations of the base claims 1, 12, 22, and 32. However, even if timestamp resolution specification of 500 ns is added to Ueda, the combination of references fails to disclose the limitations of accessing an (timestamp packet) index in an RTP header, using the (timestamp packet) index to locate a PCR MPEG2TS that is randomly positioned in the RTP payload, or linking a timestamp with the PCR MPEG2TS to eliminate jitter, as recited in Applicant's claims 1 and 22. Neither does the combination of references describe a process that encapsulates an (timestamp packet) index field to a RTP packet header for use in locating a PCR MPEG2TS that is randomly positioned in the RTP payload, as recited in claims 12 and 32.

Further, the motivation of "synchronization" does not suggest modifications to Ueda that would make the Applicant's claim limitations obvious, based on either the Ando reference, or what was well known at the time. The 500 ns PCR arrival time jitter is defined in the protocol, and Ueda would have been unable to practice his invention without already being compliant to this specification. Therefore, there appears to be no motivation to modify Ueda based upon the rationale of synchronization. Unless it can be shown that Ando suggests modifications to Ueda that include a (timestamp packet) index, embedded in a header and pointing to a randomly positioned PCR MPEG2TS, then Ando (or synchronization) cannot be said to suggest modifications that make the claimed invention obvious. Since the combination of references neither explicitly discloses all the claim limitations, nor suggests modification to

Ueda that would make all the limitations obvious, the Applicant requests that the rejection of claims 2, 3, 23, and 33 be withdrawn.

The ***Response to Arguments*** Section of the Office Action states that the Applicant's arguments have been directed to the references individually, citing *In re Keller*. The Applicant respectfully disagrees. The Applicant has discussed the *combination* of the 500 ns jitter specification (Ando) with Ueda. However, since Ueda would have already been compliant with this specification in order to practice his invention, it is difficult to see how the 500 ns specification suggests any modifications to Ueda. Also as noted above, the *combination* of references does not comprise all the limitation recited in the claimed invention.

The obviousness rejection may also be supported by what was well known at the time of the invention. In that case however, the obviousness rejection must provide evidence that such a modification would have been obvious to one with skill in the art based upon what was well known at the time of the invention. "(A)nalysis [of whether the subject matter of a claim would have been obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007). However, if the *prima facie* rejection is supported by what was known by a person of ordinary skill in the art then additional evidence should have been provided. Notable, when the source or motivation is not from the prior art references, "the evidence" of motive will likely consist of an

explanation or a well-known principle or problem-solving strategy to be applied". *DyStar*, 464 F.3d at 1366, 80 USPQ2d at 1649.

The only principle or problem-solving strategy mentioned in the Office Action is "synchronization". The Office Action does not supply evidence that it was well known at the time of the invention to access an (timestamp packet) index in an RTP header, use the (timestamp packet) index to locate a PCR MPEG2TS that is randomly positioned in the RTP payload, or link a timestamp with the PCR MPEG2TS to eliminate jitter.

A *prima facie* analysis of motivation is especially critical in the instant rejection, since the rejection is predicated on limitations that are not explicitly disclosed in the prior art references. The claimed invention can only be obvious if an artisan makes substantial modifications to Ueda. However, there is nothing in the Ando reference that suggests a modification. Further, no evidence has been provided that such a modification would have been obvious based upon well known principles.

With respect to the second analysis criteria needed to support the G) obviousness rationale, even if a practitioner were given the Ueda and Ando references as a foundation, no evidence has been provided to show that there is a reasonable expectation of success in the claimed invention. That is, there can be no reasonable expectation of success if the references, and what was known by artisan at the time of the invention, do not teach all the limitations of the claimed invention.

In summary, the Applicant respectfully submits that a *prima facie* case of obvious has not been supported since the combination of Ueda and Ando does not explicitly disclose every limitation of claims 1, 12, 22, 32, 41, and 43. Neither has a case been supported that Ueda can be modified to supply the missing limitations in view of Ando, or what was well known by a person of skill at the time of the invention. Therefore, the Applicant requests that the rejection of claims 2, 13, 23, and 33 be removed.

It is believed that the application is in condition for allowance and reconsideration is earnestly solicited.

Respectfully submitted,

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